

**Letter of Findings Number: 04-20110341P**  
**Use Tax –Penalty**  
**For the Period 2010**

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**ISSUE**

**I. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is an individual residing in Indiana. Taxpayer purchased tangible personal property without remitting sales or use tax. The Indiana Department of Revenue ("Department") conducted an investigation and determined that Taxpayer owed tax, interest, and penalty on the tax. Taxpayer protested the penalty, the Department conducted an administrative hearing, and this Letter of Findings results.

**I. Tax Administration–Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent penalty on a use tax liability.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer states that she mistakenly thought the item in question was not subject to Indiana sales tax. Taxpayer further asserts that she has never had a prior tax issue with Indiana. A review of Taxpayer's records for the past several years confirms Taxpayer's assertions regarding her tax payment and reporting history. Based on the particular facts and circumstances in this case, Taxpayer has provided sufficient information to conclude that penalty waiver is justified in this case.

**FINDING**

Taxpayer's protest is sustained.

*Posted: 10/26/2011 by Legislative Services Agency*

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